

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

CAMEO LOREE GARRETT,

Plaintiff,

6:12-cv-581-CL

v.

Amended
FINDINGS AND
RECOMMENDATION

ROBERT MULLER, et al.,

Defendants.

CLARKE, Magistrate Judge.

Plaintiff filed a pleading captioned "Petition for Writ of Habeas Corpus pursuant 28 USC 2255 with leave to amend." Plaintiff paid a \$5.00 filing fee and the pleading was docketed as a petition under 28 U.S.C. § 2254. Plaintiff does not appear to be in custody for purposes of proceeding under § 2254 or § 2255.

1 - FINDINGS AND RECOMMENDATION

For the reasons set forth below, plaintiff's complaint should be dismissed, without service of process, on the basis that it is frivolous. See 28 U.S.C. § 1915(d).

STANDARDS

A complaint is frivolous "where it lacks an arguable basis in law or in fact." Neitzke v. Williams, 490 U.S. 319, 324 (1989); Lopez v. Dept. of Health Services, 939 F.2d 881, 882 (9th Cir. 1991); Jackson v. State of Ariz., 885 F.2d 639, 640 (9th Cir. 1989). The term "'frivolous' . . . embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." Neitzke, 490 U.S. at 325 (footnote omitted); McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991); Jackson, 885 F.2d at 640.

Accordingly, in reviewing a complaint for frivolity, a trial court may "pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Neitzke, 490 U.S. at 327. In so doing, the assessment of the factual allegations must be weighted in favor of the plaintiff. Denton v. Hernandez, 112 S.Ct. 1728, 1733 (1992).

"Baseless" claims subject to sua sponte dismissal include those "describing fantastic or delusional scenarios." Neitzke, 490 U.S. at 328; Denton, 112 S.Ct. at 1733; McKeever, 932 F.2d at 798. "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible." Denton, 112 S.Ct. at

1733.

DISCUSSION

I find that the factual allegations in the instant case are irrational and wholly incredible. Plaintiff claims that she and her minor child are "unlawfully imprisoned by the FBI" and subjected to "torture." The alleged factual scenario is difficult to follow, but the allegations suggest that any cause of action that may theoretically exist arose in the state of Washington. Complaint (#1) p. 2. Plaintiff alleges that the alleged "kidnapping" and other "crimes" occurred in the state of Washing and or Canada, but that she has filed her complaint in the District of Oregon because of "crimes committed by Clerks, Judges, and/or Officers of the District Court of Washington. Id. Allegations of this sort go on for 8 single-spaced typewritten pages.

No matter how liberally the complaint is construed, it fails to state a claim. Accordingly, the complaint should be dismissed.

CONCLUSION

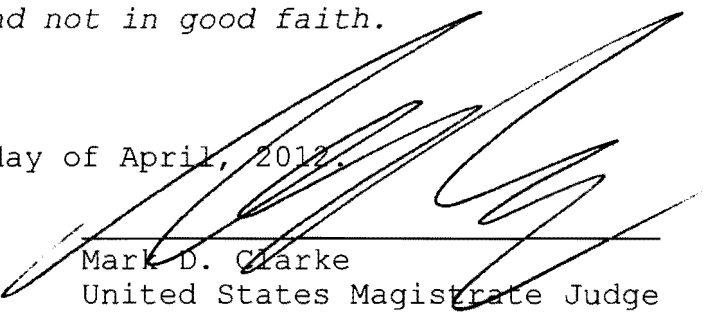
Based on the foregoing, plaintiff's complaint should be DISMISSED. Because it is apparent that the deficiencies of the complaint cannot be cured by amendment, the dismissal is with prejudice.

This recommendation is not an order that is immediately

appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

Any appeal from a judgment of dismissal in this case would be frivolous and not in good faith.

DATED this 11 day of April, 2012.



Mark D. Clarke
United States Magistrate Judge

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